



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

July 12, 1993

Honorable James D. Ross
Midland County Auditor
P.O. Box 421
Midland, Texas 79702

Letter Opinion No. 93-57

Re: Whether a commissioners court may
award additional compensation to an
employee for services already rendered
(ID# 19816)

Dear Mr. Ross:

You have requested an opinion concerning the authority of a commissioners court to award additional compensation to an employee for services already rendered. You specifically ask whether such a payment would be authorized in the following situation:

The Court has been requested to authorize a retroactive payment amounting to \$1,625 to a jailer who earned a "Jailer Proficiency Certificate" on December 23, 1991. The pay scale for the County, which was officially in existence prior to that date includes "Basic Certificate" pay of an additional \$125 per month for a jailer who holds such a certificate. A jailer is required to obtain the certificate within one year after being appointed.¹

The employee was promoted to jailer on October 16, 1991, and her base pay was appropriately adjusted. Although she earned her certificate in December of 1991, the Court was not notified of this fact until January 22, 1993, when the Chief Deputy Sheriff signed an authorization for the payroll office to increase the employee's pay by \$125 per month and asked that the increase be made effective retroactively to January 1, 1992. The Chief Deputy stated that the failure to process the authorization on a timely basis was an oversight.

Based upon these facts, you ask whether the commissioners court is constitutionally authorized to make a retroactive payment of extra compensation to the employee. Following a thoughtful review of your request letter, we have determined that the payment in this case would not be a retroactive payment in violation of article III, section 53 of the

¹You also state that upon receipt of the proficiency certificate, the jailer must then obtain a payroll memo which must be submitted to the commissioners court for approval.

Texas Constitution; rather, the payment would be considered backpay to which the employee was automatically entitled.

Article III, section 53, of the Texas Constitution prohibits a county from granting extra compensation to county employees after their services have been rendered. *Fausett v. King*, 470 S.W.2d 770, 774 (Tex. Civ. App.--El Paso 1971, no writ). Article III, section 53 provides the following:

The Legislature shall have no power to grant, or to authorize any county or municipal authority to grant, or to authorize any county or municipal authority to grant, any extra compensation, fee or allowance to a public officer, agent, servant or contractor, after service has been rendered *or a contract has been entered into, and performed in whole or in part*; nor pay, nor authorize the payment of, any claim created against any county or municipality of the State, under any agreement or contract, made without authority of law. [Emphasis added.]

Article III, section 53 states an express prohibition against a grant of supplemental income for contractual employees for services already rendered. This office has issued several opinions which support this conclusion. See Attorney General Opinions O-5104 (1943); O-6736 (1946); *see also* Attorney General Opinion MW-68 (1979) (school board may authorize policy to increase salaries, however such authorization is not binding). In Attorney General Opinion O-5104 (1943), this office concluded that supplemental compensation could not be paid retroactively. Similarly, in Attorney General Opinion O-6736, it was concluded that where the commissioners court was authorized to increase an officer's compensation, it could only grant the increase in the current year in an amount proportional to the number of months remaining in the year.

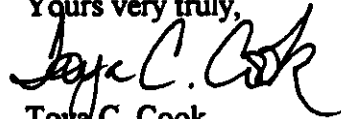
However, the prohibition against retroactive salary increases does not apply in this particular instance where the employee is automatically entitled to an increase in salary upon obtaining a proficiency certificate. See Attorney General Opinions H-1186 (1978); H-786 (1976); H-402 (1974).² Furthermore, article III, section 53 does not prohibit the payment of backpay to which an employee is entitled but not paid. See *Douthit v. Ector County*, 740 S.W.2d 16 (Tex. App.--El Paso 1987, writ denied).

²Similarly, the prohibition does not preclude an employer from executing a new contract for supplemental income, provided additional consideration is given by the employee. Nor does it preclude the employer from honoring an existing contract awarding supplemental income to an employee who provides additional consideration.

S U M M A R Y

Article III, section 53 of the Texas Constitution prohibits the grant of supplemental income for contractual employees after commencement of their contracts. However, this prohibition does not preclude a commissioners court from approving the payment of back wages to which an employee was automatically entitled to receive.

Yours very truly,

A handwritten signature in black ink, appearing to read "Toya C. Cook", written over the typed name.

Toya C. Cook
Assistant Attorney General
Opinion Committee